

E-Filed 9/15/14

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

VINCENT PRICE MCCOWAN,

No. C 13-0407 RS (PR)

Plaintiff,

**ORDER RE: DIRECTIONS TO
PLAINTIFF;**

v.

**ORDER VACATING BRIEFING
SCHEDULE**

G.D. LEWIS, et al.,

Defendants.

This is a federal civil rights action. The sole remaining defendant (A. Avalos) remains unserved, the summons having been returned as unexecuted. (Docket Nos. 35 and 36.)

In cases wherein the plaintiff proceeds *in forma pauperis*, the “officers of the court shall issue and serve all process.” 28 U.S.C. § 1915(d). The Court must appoint the Marshal to effect service, *see* Fed. R. Civ. P. 4(c)(2), and the Marshal, upon order of the Court, must serve the summons and the complaint, *see Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994). Although a plaintiff who is incarcerated and proceeding *in forma pauperis* may rely on service by the Marshal, such plaintiff “may not remain silent and do nothing to effectuate such service”; rather, “[a]t a minimum, a plaintiff should request service upon the appropriate

1 defendant and attempt to remedy any apparent defects of which [he] has knowledge.”

2 *Rochon v. Dawson*, 828 F.2d 1107, 1110 (5th Cir. 1987).

3 Here, plaintiff’s complaint has been pending for over 120 days, and, consequently,
4 absent a showing of “good cause,” is subject to dismissal without prejudice as to the
5 unserved defendant, A. Avalos. *See* Fed. R. Civ. P. 4(m). Because plaintiff has not provided
6 sufficient information to allow the Marshal to locate and serve the above-referenced
7 defendant, plaintiff must remedy the situation or face dismissal of his claims against him.
8 *See Walker*, 14 F.3d at 1421–22 (holding prisoner failed to show cause why prison official
9 should not be dismissed under Rule 4(m) where prisoner failed to show he had provided
10 Marshal with sufficient information to effectuate service).

11 Accordingly, plaintiff must either himself serve the unserved defendant with the
12 summons and complaint, or provide the Court with an accurate current location such that the
13 Marshal is able to serve such defendant. If plaintiff fails to effectuate service, or provide the
14 Court with an accurate current location for Avalos, **on or before November 1, 2014**,
15 plaintiff’s claims against Avalos, along with the complaint, will be dismissed without
16 prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

17 The briefing schedule set forth in the second order of service (Docket No. 29) is
18 VACATED, and the Clerk shall terminate the appropriate deadlines. Defendants are relieved
19 of their obligation to file a dispositive motion, or notice regarding such motion. If Avalos is
20 served successfully, the Court will set a new briefing schedule.

21 **IT IS SO ORDERED.**

22 DATED: September 15, 2014

23 
24 RICHARD SEEBORG
25 United States District Judge
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